

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

AMPERSAND PUBLISHING, LLC d/b/a
Santa Barbara News-Press,

Petitioner,

NATIONAL LABOR RELATIONS
BOARD,

Respondent.

GRAPHICS COMMUNICATIONS
CONFERENCE OF THE
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS,

Intervenor,

CASE NO. 15-1074, 15-1082, 15-1154

31-CA-28589

**INTERVENOR'S MOTION FOR
PUBLICATION OF MARCH 3, 2017
JUDGMENT**

Intervenor Graphics Communications Conference of the International Brotherhood of Teamsters ("GCC/IBT" or "Union") hereby respectfully moves that this Court publish its March 3, 2017 Judgment in this matter, for the following reasons:

1. The D.C. Circuit's Handbook of Practice and Internal Procedures states, in relation to publication of its opinions and memoranda, that:

The Court's policy is to publish an opinion or memorandum if it meets one or more of the following criteria: (1) the opinion resolves a substantial issue of

first impression generally or an issue presented for the first time in this Court; (2) the opinion alters, modifies, or significantly clarifies a rule of law previously announced by the Court; (3) the opinion calls attention to an existing rule of law that appears to have been generally overlooked; (4) the opinion criticizes or questions existing law; (5) the opinion resolves a conflict in decisions within the Circuit or creates a conflict with another circuit; (6) the opinion reverses a published district court or agency decision, or affirms it on grounds different from those in a published opinion of the district court; or (7) the opinion warrants publication in light of other factors that give it general public interest.

2. In this case, the Court's Judgment met at least criteria numbers 2, 3, 6 and 7, primarily because it sets important boundaries on the reach and amplitude of this Court's decision in *Ampersand Publ'g LLC v. NLRB*, 702 F.3d 51 (D.C. Cir. 2012) ("*Ampersand I*"), published in the Federal Reporter, as well as because it decided much of the case on grounds different from those on which the NLRB relied. *Hunt v. United States VA*, 739 F.3d 706 (D.C. Cir. 2014). Because there is a long and continuing history in the well-publicized labor dispute between media employer Ampersand and the GCC/IBT, much of it marked by published decisions¹, this decision signals an important

¹ In addition to *Ampersand I*, there are the underlying NLRB decisions, and *McDermott v. Ampersand*, 593 F.3d 950 (9th Cir. 2010), affirming 2008 U.S. Dist. LEXIS 94596 (C.D. Cal., May 21, 2008), and *NLRB v. Ampersand Publ'g, LLC*, 2015 U.S. Dist. LEXIS 176001 (C.D. Cal. Dec. 1, 2015), aff'd *NLRB v. Ampersand Publ'g, LLC*, 2016 U.S. Dist. LEXIS 15813 (C.D. Cal. Feb. 3, 2016)(appeal pending), all involving, *inter alia*, the issue of First Amendment defenses to labor law enforcement.

chapter that should be treated with equivalent formal acknowledgement as was provided in *Ampersand I* and other related decisions.

3. Similarly, because of the continuing nature of the dispute between the Employer and the Union, the potential for similar disputes in the future coming before the NLRB and other tribunals – including this one -- involving these and other parties on the issues of newspaper and media staffing and collective bargaining, and the consequent need for the guidance on those subjects provided in the Court's decision, the March 3, 2017 Judgment merits publication. *Cf. Taylor v. Huerta*, 723 F.3d 210, 212 (D.C. Cir. 2013).

4. The Court's decision meets criteria 7 because, as the series of decisions in this dispute chronicle, much of the narrative to date has played out in public, and the parties have each sought out public attention and support for their positions. E.g., *Ampersand I*, 702 F.3d at 54-55; JDA 1355, 1780-1782. The wider public's interest in access to this decision thus weighs in favor of publication. See, *Roth v. United States DOJ*, 642 F.3d 1161, 1176 (D.C. Cir. 2011) (in FOIA context, public interest in well-publicized matters).

5. The NLRB does not oppose this request. The undersigned solicited Ampersand's position on this request on March 7, 2017 but did not receive a response as of this filing.

Wherefore, Intervenor respectfully moves this Court to publish its March 3, 2017 Judgment.

Dated this 9th day of March, 2017.

By: /s/ IRA L. GOTTLIEB

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CERTIFICATE OF COMPLIANCE

Intervenor's Motion for Publication of March 3, 2017 Judgment complies with the word limitation contained in Local Rule 32(g). It consists of 724 words as counted by the computer at our firm referenced below, in Times New Roman – 13-point font.

DATED: March 13, 2017

By: /s/IRA L. GOTTLIEB
IRA L. GOTTLIEB

CERTIFICATE OF SERVICE

I hereby certify that on March 13, 2017, copies of the foregoing **INTERVENOR'S MOTION FOR PUBLICATION OF MARCH 3, 2017 JUDGMENT** was served on the following counsel of record through the CM/ECF system if they are registered users, or, if they are not, by serving a true and correct copy at the addresses listed below:

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